

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTH CENTRAL BELL TELEPHONE COMPANY)	
ALLEGED FAILURE TO COMPLY WITH)	CASE NO.
COMMISSION REGULATIONS)	89-129

O R D E R

This matter arising upon motion of Elizabeth Sachleben filed July 3, 1989 to intervene as a full party in this action on the grounds that her rights will be affected by these proceedings, and it appearing to this Commission as follows:

On May 25, 1989, the Commission initiated this case (1) to determine whether South Central Bell ("SCB") should be subject to penalties for its alleged failure to comply with Commission Regulation 807 KAR 5:061, Section 2,¹ and (2) to examine SCB's efforts to ensure that all telephone service drops within its system comply with a minimum vertical clearance standards of the National Electric Safety Code ("NESC"). The Commission took this action upon receipt of a utility accident investigation report

¹ "Acceptable Standards. Unless otherwise specified by the commission, the utility shall use the applicable provisions in the following publications as standards of accepted good engineering practice for the construction and maintenance of plant and facilities, herein incorporated by reference: (1) National Electric Safety Code; ASA C-2 1981 Edition."

that a telephone service drop belonging to SCB had not been installed or maintained in accordance with NESC standards.

Ms. Sachleben claims that she was injured in the accident which was the subject of the investigation report, and she seeks to intervene in this proceeding as a party for the purpose of "receiving service of any petition, pleadings, testimony and/or other correspondence." Ms. Sachleben argues that she has an interest in this proceeding "since a potential violation of a statute or regulation which is the direct cause of an injury may lead to a finding of negligence per se in a subsequent civil proceeding" against SCB.²

Commission Regulation 807 KAR 5:001, Section 3(8), governs intervention in Commission proceedings. It provides in part:

If the Commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by a party is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

Thus the regulation requires a person seeking to intervene to establish either (1) "a special interest" in the proceeding, or (2) that intervention is likely to develop facts and issues which

² Letter from Ronald P. Hillerich, counsel for Ms. Sachleben, to Hearing Officer Paul Shapiro (July 31, 1989) (discussing grounds for Ms. Sachleben's motion for intervention).

assist the Commission in the case. Ms. Sachleben's motion satisfies neither requirement.

The right of intervention in a Commission proceeding broadly parallels the right of intervention under CR 24.01(b). That rule permits a person to intervene in any action in which he has "an interest" and where the disposition of that action may, as a practical matter, impair or impede his ability to protect that interest. The term "interest" under 24.01(b) has been defined as a "stake in the outcome." Bertelsman and Philipps, Kentucky Practice, 4th Ed., Civil Rule 24.01.

Ms. Sachleben has demonstrated no special interest in this proceeding. The purpose of this proceeding is to ensure SCB's compliance with Commission regulations. Each member of the public has an equal interest in ensuring SCB's compliance. In this proceeding, the public's interest is adequately represented by the Attorney General who has intervened as a party for that purpose. That Ms. Sachleben may have been injured as a result of SCB's alleged noncompliance with Commission regulations does not enhance or enlarge her interest, and she is not entitled to intervene on that ground.

Ms. Sachleben argues that the outcome of this proceeding will greatly affect any subsequent civil action against SCB brought by her and that, therefore, she has a stake in the outcome of this proceeding. Unless Ms. Sachleben becomes a party, however, she will not be bound by the Commission's findings in this proceeding nor estopped from litigating factual issues which are litigated

and decided herein. Pantex Towing Corp. v. Glidewell, 763 F.2d 1241 (11th Cir. 1985). Therefore, any civil action which she chooses to bring against SCB will be unaffected by this proceeding.

Ms. Sachleben has also failed to demonstrate that her intervention as a party is likely to present issues or develop facts that will assist the Commission in fully considering this matter. Any information that Ms. Sachleben possesses concerning the accident in which she was involved can more easily and expeditiously be provided by her as a witness at hearing.

As she has not satisfied the requirements for intervention under Commission Regulation 5:001, Section 3(8), she is not entitled to intervene in these proceedings.

IT IS THEREFORE ORDERED that the motion by Elizabeth Sachleben to intervene fully as a party to these proceedings is denied.

Done at Frankfort, Kentucky this 8th day of September, 1989.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:

Executive Director